IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.	:	10/059,031	Confirmation No. : 7279
First Named Inventor	:	Toshihiro TAKAGI	
Filed	:	January 30, 2002	
TC/A.U.	:	2623	
Examiner	:	U. Raman	
Docket No.	:	010482.50891	
Customer No.	:	23911	
Title	:	Channel Selection Device for Use in Digital/analog Broadcasting Receiver and Digital/analog Broadcasting Receiver Equipped with The Same	

AFTER-FINAL REQUEST FOR RECONSIDERATION

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully submit that the Office Action issued on April 18, 2008, was made final prematurely, and accordingly, the finality of this Office Action should be withdrawn. This Request includes the same arguments raised in the Petition to Withdraw Finality filed on April 24, 2008, and these arguments are being re-filed in this Request pursuant to a telephone conversation between the undersigned and SPE Kelly. The merits of the final Office Action will be addressed in a subsequently filed Reply.

Regarding the propriety of final rejections on a second or subsequent action on the merits, M.P.E.P. § 706.07(a) states that such actions:

> shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

It is respectfully submitted that the new grounds of rejection in the final Office Action issued on April 18, 2008, was not necessitated by Applicants' amendment and was not based on information submitted in an Information Disclosure Statement filed during the period set forth in 37 C.F.R. § 1.97(c). Instead, based on the reasoning provided in the Office Action, it appears that the new grounds of rejection could have been made regardless of Applicants' amendments.[1]

The Office Action issued on October 31, 2007, rejected claim 5 under 35 U.S.C. § 103(a) as being obvious in view of the combination of U.S. Patent No. 6,775,843 (McDermott) and U.S. Patent No. 6,707,508 (Mears).

Applicants' Reply filed on January 9, 2008, amended claim 5 as follows:

> 5. (Currently Amended) A method for channel selection, the method comprising the acts of:
>
> receiving a channel changing instruction;
>
> determining whether a channel corresponding to the channel changing instruction is stored in a memory, wherein a channel is stored in the memory due to a previous selection of a main channel corresponding to a main channel of the channel changing instruction; and
>
> when the channel corresponding to the channel changing instruction is not stored in the memory,

[1] The discussion that follows is not an acquiescence that this is a proper grounds of rejection, but merely a discussion based on whether, in view of the reasoning provided in the Office Action, the new grounds of rejection was necessitated by Applicants' amendments.

selecting a predetermined sub-channel in a same channel as a desired channel, or

selecting a predetermined sub-channel in a same physical channel as the desired channel.

The final Office Action issued on April 15, 2008, *added* the new rejection of claim 5 for obviousness-type double patenting in view of U.S. Patent No. 7,281,259 ("Takagi"), McDermott and Mears. This rejection relies upon McDermott for the disclosure of "determining whether a channel corresponding to a channel changing instruction is stored in a memory when a channel is stored in the memory due to a previous selection of a main channel and to a main channel of the channel changing instruction."[2]

Thus, adding the wherein clause to the determining act did not *necessitate* the obviousness-type double patenting rejection because, based on the reasoning provided by the Office Action, this rejection could have been made in the October 31, 2007, Office Action. Instead, based on the reasoning provided in the final Office Action, claim 5 could have been subject to the obviousness-type double patenting in view of Takagi, McDermott and Mears regardless of the amendments made to Applicants' claim 5.

Because the new ground of rejection in the final Office Action issued on April 18, 2008, is not necessitated by Applicants amendments of the claims and is not based on information cited by the Applicants in an Information Disclosure

[2] Applicants note that this quote in the final Office Action is not identical to the actual language of Applicants' claim 5.

Statement filed during the period set forth in 37 C.F.R. § 1.97(c), it is respectfully submitted that the finality of this Office Action is improper and should be withdrawn.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #010482.50891).

Respectfully submitted,

June 5, 2008

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